

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

JEROME S. CAPPS,	:	
Plaintiff,	:	
vs.	:	Case No. 3:11cv00182
CAROLYN W. COLVIN,	:	District Judge Walter Herbert Rice
Acting Commissioner of the Social	:	Chief Magistrate Judge Sharon L. Ovington
Security Administration,	:	
Defendant.	:	

DECISION AND ENTRY

This case is before the Court upon the Motion and Memorandum For Allowance Of Attorney Fees filed by Plaintiff's attorney (Doc. #s 19, 20) and the Acting Commissioner's Response (Doc. #21).

Plaintiff's counsel seeks an award of attorney fees under 42U.S.C. §406(b) in the total amount of \$11,300.00. (Doc. #20, PageID at 904). Plaintiff's counsel states that the requested amount of attorney fees is "less than 25% of the retroactive benefits awarded to the Plaintiff payable under §406(b)." *Id.* Counsel further states, "Upon receipt of this sum [\$11,300.00], counsel for Plaintiff will remit the EAJA fee of \$5,650.00 directly to Plaintiff." (Doc. #20, PageID at 904). The Acting Commissioner "does not oppose Plaintiff's attorney's request that this Court order payment of \$11,300.00, given counsel's

promise to remit the amount of the EAJA fee award to Plaintiff.” (Doc. #21, PageID at 907).

In the absence of opposition by the Acting Commissioner, the Motion, Memorandum, and supporting materials filed by Plaintiff’s counsel establish that 25% of the past due benefits awarded to Plaintiff is \$19,083.48. Consequently, the amount of attorney fees counsel seeks – \$11,300.00 – is reasonable as it is well under the statutory limit set by 42 U.S.C. §406(b).

Accordingly, the Court hereby **ORDERS** that:

1. The Motion For Allowance Of Attorney Fees (Doc. #19) is GRANTED;
2. The Commissioner shall pay Plaintiff’s attorney fees from Plaintiff’s past-due benefits, pursuant to 42 U.S.C. §406(b), in the amount of \$11,300.00;
3. Upon receipt of the fee award of \$11,300.00, Plaintiff’s counsel shall forthwith remit the EAJA fee of \$5,650.00 directly to Plaintiff; and
3. The case remains terminated on the docket of this Court.



Walter Herbert Rice
United States District Judge